IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 234 of 1999

WITH

SPECIAL CRIMINAL APPLICATION NO.632 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGUBHAI JIVABHAI PATEL

Versus

KALABEN D/O BHAGUBHAI JIVABHAI PATEL

Appearance:

MR PF ADHVARYU for Petitioner

MR PRADEEP PATEL for Respondent No. 1

MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for State

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. These proceedings are between Kalaben, the daughter and Bhagubhai, the father, and arise from an

application made to the learned Magistrate u/s 125 of the Criminal Procedure Code by the said daughter against the said father.

2. The daughter had filed an application u/s 125 of the Criminal Procedure Code claiming maintenance from her father on the ground that although she is an adult, aged 27 years, she is unmarried and unable to maintain herself. This application was resisted by the father on various grounds. The learned Magistrate rejected the application for maintenance mainly on the ground that the daughter is a major and therefore, not entitled to maintenance, that she is physically and mentally fit and therefore, it cannot be said that she is unable to maintain herself, and that the documentary evidence indicates that she has received specific property from her father under the deed of relinquishment under which she has renounced her share in the family property. The daughter therefore preferred a Revision u/s 397 of the Criminal Procedure Code to the Sessions Court, being Criminal Revision Application No.19/98. The Sessions Court, after hearing the parties, was pleased to allow the revision application by setting aside the order of the learned Magistrate, and directed the father to pay a maintenance to his daughter at the rate of Rs.350/- per month.

3. The judgement and order of the Sessions Court has been challenged by the father Bhagubhai by filing the present Criminal Revision Application No.234/99 u/s 397 of the Criminal Procedure Code, whereas the daughter has filed Special Criminal Application No.632/99 for enhancement of the maintenance amount.

4. I have heard the learned counsel for the respective parties at length, and have carefully perused the oral and documentary evidence on record.

5. First of all, in order to examine the legality and validity of the impugned judgement of the revisional court below, we may examine the points on which the Sessions Court has upset the findings recorded by the learned Magistrate.

The Sessions Court has found that so far as section 125 [1] clause [c] is concerned, being a major, is not a disqualification for the claim of maintenance. This view is obviously correct. A person who claims or asserts a right to maintenance, and who has attained majority, may make such a claim in the capacity of such adult child, provided that such child is unable to

maintain itself on account of physical or mental abnormality or injury. Obviously therefore, the Sessions Court was correct and justified in setting aside the view of the learned Magistrate.

The Sessions Court was also right in reversing the finding of the learned Magistrate to the effect that the claimant had relinquished her share in the property, and that document under which such relinquishment was made also conferred upon her the corresponding consideration of Rs.50,000/-. The Sessions Court rightly discarded this view, culled out from the document in question, for the simple reason that the document has not been proved on record according the rules of evidence, and is therefore not exhibited. The fact is and this is not in dispute, that only her signature on the document is admitted and therefore, by a specific order, it is only the signature of the claimant which is exhibited, and not the contents of the document. The contents of the document have not been proved by any other means and therefore, they have remained unexhibited. The Sessions Court therefore rightly refused to accept this as evidence of property acquired by the daughter.

6. We now come to the crux of the matter as to whether the daughter has established by appropriate evidence on record the fact that she is unable to maintain herself.

Clause [c] of section 125 sub-section [1] reads as under :-

> [c] his legitimate or illegitimate child [not being a married daughter] who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself.

A plain reading of clause [c] makes it clear that, in order to claim maintenance under the said clause, the claimant must establish that he or she is unable to maintain himself/herself, and that such inability to maintain himself / herself is on account of any physical or mental abnormality or injury. Thus, this requires proof in two different areas. First, the claimant must establish absolute inability to maintain herself, and secondly, it must be shown that this inability is specifically on account of physical or mental abnormality or injury.

7. In the context of the aforesaid requirement of law, the Sessions Court has, perhaps with a view to adopt a sympathetic approach and attitude, completely reversed the burden of proof cast upon the claimant by the statute. This entire aspect has been dealt with by the Sessions Court in a casual and facile manner, merely by observing that the record of the case does not establish that the applicant - Kalaben had any source of income or that she has the capacity to maintain herself. This approach of the Sessions Court clearly indicates that it has shifted the burden of proof upon the person against whom the claim is made, namely, the father. As discussed hereinabove, a plain reading of clause [c] of section 125[1] of the Criminal Procedure Code indicates that it was for the claimant to establish that she was unable to maintain herself and that this inability was specifically on account of any physical abnormality or injury.

8. Having concentrated on the last two aspects of the matter, I have carefully perused the oral and documentary evidence on record.

The applicant - daughter has examined herself on oath at exh.17. Although she makes recital at various stages of her deposition that she is unable to maintain herself because she is unable to do any work whatsoever and that this is due to "kidney disease", mere assertion by the applicant in this regard cannot be regarded to be evidence.

This evidence is sought to be supplied by the applicant by examining her doctor who has deposed at exh.29, and who has issued the certificate at exh.20.

This doctor who is a witness of the applicant daughter has been cross examined at length. He was obliged to make certain admissions, both during his examination in chief, as also in the cross examination. The sum and substance of his deposition is that, firstly, when the doctor had issued the certificate exh.20, certifying that the applicant was suffering from "Cystitis", that was not a disease of the kidney. The doctor admitted that this cannot be said to be a kidney disease. He further admitted that even Chronic Cystitis is like any other ordinary disease, that it is not permanent, and specifically admitted that it is both treatable and curable.

Even the diagnosis which has been expressed by the doctor in the certificate exh.20 has been challenged. The doctor has admitted that when the patient came to him

for treatment of the complaint presented by her, the patient had not shown him any previous and/or old blood reports or urine reports. The doctor further admitted that, during the course of treatment given by him, he had not asked the patient to undergo any blood tests or urine tests. He further admitted that his diagnosis is based only upon the complaint made by the patient, and the reading of the patient's blood pressure and pulse.

This is the state of medical evidence. This is most unimpressive to say the least. It would be difficult to cull out from this evidence that the applicant was suffering from "physical abnormality or injury" of such nature and character which would render the applicant unable to maintain herself.

In this context, it is also pertinent to note that the Sessions Court has reversed the burden of proof by observing that the record of the case does not disclose how the applicant is able to maintain herself. In this context, learned Sessions Judge completely overlooked that it was for the applicant to establish that she was unable to maintain herself.

9. Obviously therefore, the impugned judgement and order of the Sessions Court is clearly a perversity in law inasmuch as the same is based upon a gross misreading of the evidence on record, and by adopting a perspective not justified by clause [c] of section 125[1] of the Criminal Procedure Code. On the facts of the case, the Sessions Court could only have found that the applicant has failed to establish her inability to maintain herself due to the causes prescribed by the statute.

10. In the premises aforesaid, the impugned judgement and order of the Sessions Court is quashed and set aside. Consequently, Criminal Revision Application No.234/99 filed by the father is allowed and rule is made absolute. Consequently, Special Criminal Application No.632/99 filed by the daughter for enhancement of the amount does not survive and is accordingly dismissed. Rule is discharged.

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